



April 12, 1996

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Office of the Secretary  
c/o Rosalee Chiara  
Federal Communications Commission  
Washington, D.C. 20554

Reference: IB Docket No. 95-59  
DA 91-577  
45-DSS-MISC-03  
FCC 96-78

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Dear Ms. Chiara:

Community Management Corporation (CMC) is a professional management firm specializing in providing management services to condominiums, cooperatives and homeowner associations. Founded in 1971, CMC was the first firm in the nation formed to dedicate its management services to community associations. CMC currently provides these services to over 60 community associations or nearly 30,000 housing units in the Washington Metropolitan area.

The FCC's proposed language, as drafted, poses significant concerns - and financial liability, for community associations. There is a distinct difference in the legal composition of each housing form (condominium, cooperative, homeowner association). Consequently, the new regulations, as proposed, will have a detrimental impact on each in a different way.

We suggest that your conclusion that "Nongovernmental restrictions would appear to be directed to aesthetic considerations" is flawed. We want to **emphasize** that it is the governing documents and state law that dictates the extent and practice of how associations work. Resultantly, the FCC rules should not unduly impose on the larger responsibilities of the associations or unwittingly conflict with varying state laws or the association's governing documents, as long as the intent of the Telecommunications Act can be met by the association itself.

### CONDOMINIUMS

Through each condominium's governing legal documents, unit owners "own" their individual units and an "undivided" share of the 'Common Elements' of the association. A 'Common Element' (which is defined in each association's governing documents) typically refers to the building(s) exterior, including roofs, building facade, windows, interior hallways, recreational



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facilities, etc. Simply put, this means that an individual owner cannot carve-out a common element area - of which he is one of many owners - and claim it exclusively for himself.

In addition to 'Common Elements,' the governing documents specify 'Limited Common Elements.' 'Limited Common Elements' commonly refer to elements that remain the legal and financial responsibility of the association to maintain, but whose use is largely limited to a single condominium unit -- most typically, balconies, patios, deck and parking spaces.

The responsibility to maintain the Common and Limited Common Elements of each association is through a 'board of directors' or 'board of trustees' (as established in the association's legal documents. This legal obligation was designed and imposed to ensure and protect the physical plant of the association for the good of and on behalf of all of the condominium owners. For this maintenance, each owner pays an assessment fee. In turn, the amount of this fee is in large part determined by the maintenance requirements of the 'Common' and 'Limited Common Elements' of the association.

It is for the protection of these assets that rules and guidelines on usage of Common and Limited Common Elements are established. The association's failure to establish and enforce such rules can result in damage caused by the actions of one unit owner, at the financial expense of all other unit owners. By and large, a basic tenet of condominiums is that owners pay equitably for association expenses. Homeowners rely on this tenet when they purchase units. This is of specific concern to our condominium clients relating to the proposed FCC language for the Telecommunications Act of 1996 and Satellite Dishes.

Under the proposed language, it appears to us that a unit owner may well be able to drill into the facade of a building (outside his balcony door, for example) and attach an antenna or satellite. Not only will this damage the facade of the building, for which the association has a responsibility to maintain, but it will require all other unit owners to pay for this maintenance although they may not have chosen to own a satellite dish - or may have chosen to install it in a less severe manner. This example is applicable in a variety of circumstances.

#### HOMEOWNER ASSOCIATIONS

Unlike condominiums, the 'Common Areas' of homeowner associations are not jointly owned by the owners, but are owned by the governing association. Homeowner associations are typically comprised of townhouse units or single family units. The physical layout of such associations typically involves a large number of relatively small, individually owned lots and a significant amount of 'Common Area' and recreational facilities owned by the association, to be enjoyed by all residents equally. The density of these homes is such that the market value - and curb appeal

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of each individual home - is directly impacted by the appearance of adjoining homes. While the enforcement of design guidelines is based primarily on aesthetic considerations, this is not an issue of snobbery, but of market value -- and the ability of the association to ensure that the homes maintain a certain expected level of investment value. Please recognize that through the purchase of a unit in a community association, most purchasers have relied on the existence and enforcement of design guidelines and use restrictions for this very reason of protecting their investment value.

CMC manages individual homeowner associations with thousands of housing units. A 40" dish in the yards of, or on the roofs of these homes can - and will - have a dramatic visual impact. Visual impact is undeniably related to home value. Nevertheless, most associations welcome the recent availability of smaller satellite dishes and have been in the process of developing guidelines for their installation in a manner which will minimize any adverse visual impacts. We feel that the interests of the millions of homeowners in association communities throughout the country are best served by permitting associations to establish and enforce design guidelines which regulate the location and appearance of satellite receiving devices so long as such regulation does not unreasonably restrict the ability of homeowners who so wish to obtain access to satellite transmissions.

CMC therefore strongly urges the FCC to develop a final rule that will enable community associations to promulgate and enforce design guidelines and use restrictions with respect to the installation of satellite receiving devices, so long as such activity does not inhibit the ability of individuals to access satellite transmissions. This approach would enable individual associations to regulate the location of such devices and require appropriate screening or other measures to minimize visual obtrusiveness.

CMC also recommends that the final rule provide sufficient flexibility to allow community associations to directly install receiving devices, such as a master satellite dish, or antenna system, which would permit access by individual unit owners without the need for a multiplicity of receiving devices. Finally, CMC strongly urges that the final rule specifically ensure community associations the lawful ability to obtain financial restitution for the costs of any repairs, restoration to common property, or additional maintenance expenses, resulting from the installation of satellite receiving devices in compliance with the FCC rule.

By including the recommendations herein in a final rule, the FCC can implement the explicit intent of the Telecommunications Act without imposing undue restrictions on the ability of community associations to fulfill their obligations incorporated in state laws and association legal documents, to preserve and protect commonly owned property, and to maintain community standards and the preservation of property values.

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CMC would be more than happy to provide any additional input or information you may desire. If we can be of any assistance please call me, Bruce Steele or Lana Reynolds at (703) 631-7200.

Sincerely,

A handwritten signature in cursive script that reads "Ronald P. Kirby". The signature is written in black ink and is positioned above the printed name and title.

Ronald P. Kirby  
President

RPK:oi